

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
NOVEMBER 9, 2006**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on November 9, 2006, beginning at 10:05 a.m. The meeting was tape-recorded and the tape(s) are on file at the ABC Commission in the Legal Division.

ROLL CALL

Chairman Douglas A. Fox and Commissioner John Lyon were present at the meeting. Commissioner Mike Joyner was not present.

MINUTES OF OCTOBER 12, 2006 MEETING

Chairman Fox made a motion to waive the reading of the minutes from the October 12, 2006, meeting into the record. Seconded by Commissioner Lyon. So Ordered. Chairman Fox made a motion to approve the minutes from the October 12, 2006, meeting. Seconded by Commissioner Lyon. So Ordered.

EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST

As required by Executive Order One, Chairman Fox asked Commissioner Lyon if there were any conflicts of interest or any conditions or facts that might create the appearance of a conflict of interest with respect to any matters on the Agenda. Commissioner Lyon stated that he found no conflicts of interest. Chairman Fox stated that he had no conflicts.

RULEMAKING PETITION – BEER AND WINE COUPONS

The Commission meeting was moved upstairs to talk to Commissioner Joyner via phone to vote on the Retail Beer and Wine Coupons Petition discussed on Wednesday, November 8, 2006.

Commissioner Joyner was in favor of the petition with further study. Chairman Fox made a motion to deny the petition for rulemaking to allow cents-off coupons for malt beverages and unfortified wine in that the rule as written would not serve the public interest. Seconded by Commissioner Lyon. So Ordered.

Chairman Fox continued the meeting downstairs and stated the vote was 2-1 to not allow the change at this time. Chairman Fox encouraged the North Carolina Retail Merchants Association to sit down with them and try to clarify some of the issues.

I. HEARING CASES – 62

Chief Counsel Fred A. Gregory stated that Mr. Marc Hubbard, for contested case #1- Club Oros, was present to speak. Assistant Counsel LoRita Pinnix represented the Commission.

Ms. Pinnix stated this case came before the Commission for review on the June 3, 2005, Commission Meeting after an Administrative Hearing and the application for Club Oros was rejected. Ms. Pinnix stated the Commission accepted the decision of the Administrative Law Judge and did not issue the ABC permit. Mr. Hubbard through counsel filed a petition for Judicial Review and the case went up to Superior Court. Ms. Pinnix stated a decision was made on July 13, 2006, by Judge Ervin to send the case back to the Administrative Law Judge to find additional findings of facts and conclusions of law as to the comparison of treatment between Club Deep Oros and another business Wild Wings. Ms. Pinnix stated that Administrative Law Judge Beecher R. Gray concluded that the Commission had a reasonable basis to treat the two businesses differently and recommended to uphold the previous decision.

Mr. Marc Hubbard stated the laws in North Carolina should be fairly and equally applied to everybody. Mr. Hubbard pointed out the differences on a chart between Club Deep Oros and Wild Wings. Mr. Hubbard stated that both places had alleged sale of underage drinking. Mr. Hubbard stated that Wild Wings was found guilty in criminal court and Club Deep Oros was not found guilty. Mr. Hubbard stated that Wild Wings received a five-day suspension, was instructed by the Commission to take a class and temporary permit reinstated. Mr. Hubbard stated that Club Deep Oros received a permit revocation.

Mr. Hubbard stated since 1996, he has had nine bars with no previous sale to underage violations. Mr. Hubbard felt he had not been treated fairly in this situation.

Ms. Pinnix stated that after hearing evidence from the first case the Judge found nine separate violations during the temporary period for Club Deep Oros. Ms. Pinnix stated that Judge Gray did distinguish in his additional findings of facts as directed by the Superior Court Judge and found that the Commission did not act arbitrarily or capriciously.

Mr. Hubbard made comments to the nine separate violations. Mr. Hubbard stated he had statements from his daughter and bartender as evidence. Ms. Pinnix asked if this was evidence in Superior Court. Mr. Hubbard stated the Judge agreed they should be added.

Chairman Fox made a motion to approve the findings of Judge Gray that there was no abuse of discretion by the Commission. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Fred A. Gregory stated that no one was present to speak on behalf of contested case #2- Boom Boom Room Night Club. Assistant Counsel LoRita Pinnix stated that the case was heard on July 27, 2006, by Administrative Law Judge Sammie Chess, Jr., in High Point, North Carolina. Ms. Pinnix stated the permittee did not appear and the Commission made a motion for sanctions. Judge Chess granted the motion and recommended a penalty be imposed.

Chairman Fox made a motion to adopt the Findings of Fact and Conclusions of Law of the decision of the Administrative Law Judge. Seconded by Commissioner Lyon. So Ordered.

Chairman Fox made a motion to approve the remaining Offers in Compromise. Seconded by Commissioner Lyon. So Ordered.

II. FIRST OFFENSE CASES – 19 Listed

The following is a list of first offense violation cases in which Final Agency Decisions were signed by the Chairman on November 9, 2006, pursuant to the Commission's authorizing resolution dated November 8, 2002:

1. Carmellas Pizza – 6654 Carmel Road, Charlotte, NC 28226
2. Wilco 1827 – 1545 NC Hwy 56, Creedmoor, NC 27522
3. Food Lion 192 – 1515 West Ehringhaus Street, Elizabeth City, NC 27909
4. Petro Express 57 – 10000 North Tryon Street, Charlotte, NC 28213
5. Spankys One Stop – 3010 South Main Street, High Point, NC 27263
6. Short Stop Food Mart 74 – 3854 Old Dunn Road, Fayetteville, NC 28312
7. Ruby Tuesday 3968 – 3904-E Colony Road, Charlotte, NC 28211
8. Huffs Mountain View – 1414 US 70 East, Hillsborough, NC 27278
9. Belews Creek Grocery – 6050 Belews Creek Road, Belews Creek, NC 27009
10. Brentwood Grocery – 1804 Wade Place, High Point, NC 27260
11. Airport Exxon – 6909 Downwind Road, Greensboro, NC 27409
12. English Road Grocery – 1924 West English Road, High Point, NC 27262
13. Harris Teeter 173 – 1589 Skeet Club Road – Suite 140, High Point, NC 27265

14. K R Y's Mart – 1302 Summit Avenue, Greensboro, NC 27405
15. Kangaroo Express 3297 – 201 East 11th Street Hwy 64, Siler City, NC 27344
16. Piggly Wiggly 31 – 315 Hwy 24, Roseboro, NC 28382
17. Galaxy Supermarkets – 1233 University Drive, Durham, NC 27707
18. Lee Mart – 5338 West Market Street, Greensboro, NC 27409
19. Circle K Store 5104 – 1308 Sharon Road West, Charlotte, NC 28210

Chairman Fox made a motion to approve the Offers in Compromise for the First Offense cases. Seconded by Commissioner Lyon. So Ordered.

III. ABC STORE LOCATION – TOWN OF FRANKLIN

Administrator Michael Herring addressed the Commission concerning the proposed relocation of an ABC Store in Macon County. On October 4, 2006, the Commission received a letter from Todd Mason, Manager of the Franklin ABC Board, requesting approval to move into a larger space within the same shopping center. On October 13, 2006, ALE Agent Brian Ogle began an investigation and found that the proposed location is in the Macon Plaza Shopping Center located on U.S. Hwy 64. The proposed location is 175 Macon Plaza, Franklin, North Carolina and is located approximately 98 feet from the current Franklin ABC store.

The property is currently owned by HK New Plan Macon Chapman Limited Partnership in the Macon Plaza Shopping Center.

No conflict of interest exists between the Town of Franklin ABC Board and the property owners.

The proposed new ABC Store is approximately 6,500 square feet of which 2,800 square feet will be the sales floor and 3,000 square feet will be used for the warehouse with a loading dock and the other used as office space.

The nearest church is Fountain Worship Center Church and is approximately one mile from the proposed location.

The nearest school is East Franklin Elementary School and is approximately 1.2 miles from the proposed site.

Pursuant to ABC Commission Rules, Notice of Intent was posted on August 15, 2006, in compliance with the ABC Commission's 30-day requirement. The ABC Commission has received no objections to this relocation of an ABC Store.

Mr. Herring recommended the ABC Commission approve this request for the relocation of the store.

Chairman Fox made a motion to approve the relocation of the store. Seconded by Commissioner Lyon. So Ordered.

IV. ABC STORE LOCATION – CITY OF ASHEVILLE

Administrator Michael Herring addressed the Commission concerning the proposed relocation of an ABC Store in Buncombe County. On October 6, 2006, the Commission received a letter from Curtis Canty, General Manager of the Asheville ABC Board, requesting approval to relocate the existing Asheville ABC Store #7. On October 13, 2006, ALE Agent Brian Ogle began an investigation and found that the Asheville ABC Board is currently in negotiations to purchase property located at the intersection of Tunnel Road and Restaurant Row. The proposed relocation is 145 Tunnel Road, Asheville, North Carolina and would replace the current ABC store located at 205 Tunnel Road.

The property is currently owned by Pinnacle Properties of WNC, LLC.

No conflict of interest exists between the Asheville ABC Board and the property owners.

The nearest church is Morningside Baptist Church and is approximately .4 of a mile from the proposed location.

The nearest school is C.C. Bell Elementary School and is approximately 2.7 miles from the proposed location.

Pursuant to ABC Commission Rules, Notice of Intent was posted on October 4, 2006, in compliance with the ABC Commission's 30-day requirement. The ABC Commission has received no objections to this relocation of an ABC store.

Mr. Herring recommended the ABC Commission approve this request for the relocation of the store.

Chairman Fox made a motion to approve the relocation of the store. Seconded by Commissioner Lyon. So Ordered.

V. ABC STORE LOCATION – WAKE COUNTY

Administrator Michael Herring addressed the Commission concerning the proposed location of an ABC Store in Wake County. On October 4, 2006, the Commission received a letter from Craig Pleasants, General Manager of the Wake County ABC Board, requesting approval for a new ABC Store in Brier Creek and Leesville communities. On October 9, 2006, ALE Agent Glen Webb began an investigation and found that the proposed ABC Store is to be located on Lot 10-1 ACC Boulevard, Raleigh, North Carolina. The property is situated near the Brier Creek Shopping Center and is approximately 250 feet from the intersection of ACC Boulevard and Brier Creek Parkway.

The property is currently owned by Alexander Investment Group, LLC. The purchase price of the property is \$718,740.00.

No conflict of interest exists between the Wake County ABC Board and the property owners.

The proposed new ABC Store will be approximately 4,675 square feet.

Agent Webb was unable to locate a church within a two-mile radius of the proposed location.

The nearest school is Brier Creek Elementary School and is approximately two miles from the proposed location.

Pursuant to ABC Commission Rules, Notice of Intent was posted on September 21, 2006, in compliance with the ABC Commission's 30-day requirement. The ABC Commission has received no objections to this proposed location.

Mr. Herring recommended the ABC Commission approve this request for a new ABC Store.

Chairman Fox made a motion to approve the new ABC Store location. Seconded by Commissioner Lyon. So Ordered.

VI. RESOLUTION OF THE CITY OF GASTONIA ABC BOARD TO MANAGE THE TOWN OF DALLAS ABC STORE IN ACCORDANCE WITH G.S. 18B-703(h) AND ABC STORE LOCATION – CITY OF GASTONIA

Administrator Michael Herring addressed the Commission concerning the Gastonia ABC Board's request to merge with the Town of Dallas. On February 8, 2005, the Town of Dallas in Gaston County held an election and approved mixed beverage sales and ABC Stores. The Town of Dallas decided to merge with an existing ABC system in Gaston County in accordance with G.S. 18B-703. The Town of Dallas and the City of Gastonia entered into an agreement for the Gastonia ABC Board to operate a store within the Town of Dallas.

Mr. Herring recommended that the Commission approve the merger agreement.

Chairman Fox made a motion to approve the merger agreement. Seconded by Commissioner Lyon. So Ordered.

Administrator Michael Herring addressed the Commission concerning the proposed location of an ABC Store in Gaston County. On September 26, 2006, the Commission received a letter from Larry Beck, Executive Director of Gastonia ABC Board, requesting approval to open an ABC Store in the Town of Dallas. On October 17, 2006, ALE Supervisor J. Richard Griffin began an investigation and found that the Gastonia ABC Board will lease a 3,100 square foot space at the Windsor Shopping Center in Dallas. The rent is \$1,800.59 a month. The proposed location is 3114B Dallas High Shoals Road, Dallas, North Carolina.

The property is currently owned by Windsor Station, LLC.

No conflict of interest exists between the Gastonia ABC Board or Dallas Town Council and the property owners.

The nearest church is Plainview Baptist Church and is approximately one mile from the proposed location.

The nearest school is Car Elementary School and is approximately .9 of a mile from the proposed location.

Pursuant to ABC Commission Rules, Notice of Intent was posted on September 20, 2006, in compliance with the ABC Commission's 30-day requirement. The ABC Commission has received no objections to this proposed location.

Mr. Herring recommended the ABC Commission approve this request for a new ABC Store.

Chairman Fox made a motion to approve the new ABC Store location. Seconded by Commissioner Lyon. So Ordered.

VII. ABC STORE LOCATION – CUMBERLAND COUNTY

Administrator Michael Herring addressed the Commission concerning the proposed relocation of an ABC Store in Cumberland County. On October 9, 2006, the Commission received a letter from Gene Webb, General Manager of the Cumberland County ABC Board, requesting approval to relocate a Hope Mills ABC Store. On October 12, 2006, ALE Agent I.G. Morrow began an investigation and found that the proposed location is 2720 Hope Mills Road, Hope Mills, North Carolina. This location is at the intersection of George Owen Road and Hope Mills Road. The Cumberland County ABC Board plans to purchase property and the proposed store will operate as a self-serve retail store. The new ABC Store will replace the current operating Store #7.

No conflict of interest exists between the Cumberland County ABC Board and the property owners.

The proposed site is approximately 1.48 acres and will be purchased for \$380,000.00. The property is properly zoned.

The nearest church is Bible Baptist Church and is approximately 0.5 of a mile from the proposed location.

The nearest school is Cumberland Mills Elementary School and is approximately 0.6 of a mile from the proposed location.

Pursuant to ABC Commission Rules, Notice of Intent was posted on October 9, 2006, in compliance with the ABC Commission's 30-day requirement. The ABC Commission has received no objections to this relocation of an ABC Store or any objections locally.

Mr. Herring recommended the ABC Commission approve this request for the relocation of the store.

Chairman Fox made a motion to approve the relocation of the store. Seconded by Commissioner Lyon. So Ordered.

VIII. ABC STORE LOCATION – MECKLENBURG COUNTY

Administrator Michael Herring addressed the Commission concerning the proposed relocation of an ABC Store in Mecklenburg County. On October 6, 2006, the Commission received a letter from Calvin McDougal, Chief Executive Officer of the Mecklenburg County ABC Board, requesting approval for a new ABC Store in Charlotte, North Carolina. On October 16, 2006, ALE Supervisor J. Richard Griffin began an investigation and found that the Board wants to lease a .685-acre parcel with a 30-year lease. The Board will close existing Store #4 which is located at 1436 East Morehead Street and relocate that store to the proposed location. The existing building on the proposed site will be demolished and the Mecklenburg County ABC Board will construct a new ABC Store, which they project will cost 1.2 million to 1.4 million. The proposed location for this store is at the intersection of 3rd Street and Cherry Street.

The property is currently owned by Wells Property Number One, LLC.

No conflict of interest exists between the Mecklenburg County ABC Board and the property owners.

The new store will be built once the location is approved and it will be a single story structure with approximately 6,000 square feet.

The nearest church is First Baptist Church and is approximately .6 of a mile from the proposed location.

The nearest school is Central Piedmont Community College and is approximately .1 of a mile from the proposed location.

Pursuant to ABC Commission Rules, Notice of Intent was posted on October 2, 2006, in compliance with the ABC Commission's 30-day requirement. The ABC Commission has received no objections to this relocation of an ABC Store.

Mr. Herring recommended the ABC Commission approve this request for the relocation of the store.

Chairman Fox made a motion to approve the relocation of the store. Seconded by Commissioner Lyon. So Ordered.

IX. ABC STORE LOCATION – TOWN OF MAGGIE VALLEY

Administrator Michael Herring addressed the Commission concerning the proposed location of an ABC Store in Haywood County. On October 23, 2006, the Commission received a letter from Austin Pendley, Chairman of the Maggie Valley ABC Board, requesting approval for their second ABC Store in Maggie Valley. On October 30, 2006, ALE Agent Brian Ogle began an investigation and found that the site was outside of the county which is dry. Mr. Herring contacted the manager and advised that the Commission could not approve the store in a dry area. Mr. Herring stated the town manager of Maggie Valley faxed in a letter and the Town has plans to annex the property. Mr. Herring stated the current property owner does not want to request annexation but the Town of Maggie Valley wants to annex property. Mr. Herring stated the property owner has entered into an agreement with the Maggie Valley ABC Board to purchase this property and once purchased, the town plans to annex the property.

Mr. Herring made a recommendation to allow the Town of Maggie Valley ABC Board to purchase the property but not approve the store at this time until it is properly annexed in Maggie Valley. Mr. Herring stated that the Town of Maggie Valley is going to loan the money to the ABC Board for this purchase.

Chairman Fox made a motion to approve the purchase of the property and the ABC Store approval at a later time. Seconded by Commissioner Lyon. So Ordered.

X. OTHER BUSINESS –

Chairman Fox made a motion to adopt and change the Commission's recommended imposed fines effective January 1, 2007, for those offenses committed after January 1, 2007. Seconded by Commissioner Lyon. So Ordered.

Chairman Fox made a motion to approve Tuesday, March 13, 2007, as a future Commission meeting date. Seconded by Commissioner Lyon. So Ordered.

Mr. Herring presented the Commission activity for the month of October, 2006. The Education Division presented 101 Responsible Alcohol Seller Programs to 536 participants including ABC stores, driver/salesman or wholesalers, permittees and hospitality classes. There were 148 consultation visits to industry and nonindustry members. From the month of January through October, 2006, the Education Division has conducted 757 Responsible Alcohol Seller Programs for 3,986 participants with 1,389 consultation visits to industry and nonindustry members. The Division has also conducted 161 programs addressing 22,302 students/parents on making choices and the consequences of underage alcohol usage.

Mr. Herring stated that LB&B (warehouse section) shipped 387,000 cases of spirituous liquor in October to the ABC Boards, which was up 31,000 cases over last year and that is an 8.83% increase. Fifty thousand cases of the 387,000 cases shipped were holiday items and currently 2,000 holiday items are left for the ABC Boards. Mr. Herring stated that warehouse staff project that 4.2 million cases will be shipped out of the warehouse and that is up 200,000 cases over last year.

In October, 2006, the Permit Division received 814 applications for ABC permits compared to 679 applications in October, 2005, which is a 16.85% increase and year-to-date they have received 7,382 applications for permits. They issued 543 permits in October compared to 521 last year and that is a 4% increase and year-to-date they have issued 6,149 ABC permits this year. The Legal Division received 192 violations in October, 2006, compared to 123 last year and that is about a 36% increase and year-to-date they have received 1,486 violations. The Beer/Wine section, which is a part of the Permit Division approved 785 wines in October compared to 367 last year and that is a 53% increase. Year-to-date 6,653 wine labels have been approved. In October, 2006, only 30 new beers were approved compared to 60 a year ago and that is a 50% decrease and year-to-date 377 new beers were approved. Moneys received in the month of October were \$427,817.00 and that is up 15% for the same period last October when we received \$361,250.00. To date, the agency has sent more than General Funds \$13,171,471.00 to the General Fund.

Mr. Herring stated that several months ago the Commission approved an increase in the Local Board Markup, Bailment and Surcharge. Mr. Herring stated that our budget has working reserves of \$3.4 million and the warehouse has working reserves of \$2.5 million. Projects the Commission are working on include paving the parking lot and installing a \$350,000.00 security and surveillance system to cover this building and the ABC warehouse building.

With no further business, the meeting adjourned.

Douglas A. Fox, Chairman
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by

Dottie L. Taylor, Legal Division